

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 1064 OF 1994

IN THE MATTER OF THE ESTATE OF ISAAC KIRERU NJUGUNA (DECEASED)

RULING

1. The application dated 30th October 2014 seeks orders to restrain the respondents – Patrick Njuguna Kireru and Hannah Mwihaki Kireru – from interfering or intermeddling with the estate of the deceased herein, and in particular with LR No. 36/111/1150 Nairobi, pending hearing and determination of the suit. There is also a prayer that the Officer Commanding the Shauri Moyo Police Station assist with the execution of the restraining orders, should such orders be made.
2. The grounds upon which the application is premised are set out on the face of the application, while the facts are deposed in an affidavit sworn by the applicant, Evans Kimani Njuguna, 30th October 2014.
3. The applicant's position is that the parties had been directed on 25th July 2014 to fix the main case for hearing on the distribution of the estate and in the meantime to maintain *status quo*. The respondents are accused of going, on 22nd October 2014, to the premises standing on LR No. 36/111/1150 Nairobi, which the applicant manages, and purporting to take over ownership thereof and stopping works on the property that the applicant had commissioned. It is argued that the conduct of the respondents was unlawful and caused a breach of the peace.
4. The respondents' response to the application is in an affidavit sworn on 3rd December 2014 by Patrick Njuguna Kireru. The deponent refers to earlier rulings and states that the applicant had previously been directed to open joint estate accounts with the deponent to receive estate income, particularly that relating to LR No. 36/111/1150 Nairobi, but the applicant ignored the order. The numerous applications filed by the applicant are decried on the grounds that they are delaying the finalization of the matter.
5. Directions were given on 17th December 2014 that the application in question be disposed of by way of written submissions. Both sides complied with the order and did file their respective submissions on diverse dates. I have had occasion to read through the submissions filed.
6. I note from the record that on 17th November 2014 the parties hereto, the applicant and the respondents, recorded a consent appointing Evans Kimani Njuguna, Patrick Njuguna Kireru and Hannah Mwihaki Kireru, administrators of the estate of the deceased. It was ordered that a grant of letters of administration intestate be issued to them accordingly. It would appear that a grant is yet to issue from the registry as per the said order. Nonetheless, the three remain the administrators of the estate of the deceased.
7. By virtue of the said appointment, the property of the deceased, including LR No. 36/111/1150 Nairobi, vested in the three administrators jointly. That is the effect of section 79 of the Law of Succession Act, Cap 160, Laws of Kenya., which states as follows –

'The executor or administrator to whom representation has been granted shall be the personal representative of the deceased for all purposes of that grant, and, subject to any limitation imposed by the grant, all the property of the deceased shall vest in him as personal representative.'

8. Since the property vests in all three administrators by virtue of section 79 of the Act, none of the three can claim to have a superior right to any property so far as its administration is concerned. None can therefore seek to restrain the other from administering any particular asset. Neither can any of them accuse the other of intermeddling with the asset nor interfering with it, for an administrator cannot handle or administer an asset without dealing with it. Quite obviously the orders sought as framed are not available.
9. As joint administrators of the estate, the personal representatives of the deceased must at all times strive to work in concert in the administration of the estate. They should operate joint estate accounts; and agree on all activities touching on estate property. The renovations the applicant had commissioned on LR No. 36/111/1150 Nairobi are a good example of how not to run estate property in cases where there is joint administration. The other administrators ought to have been consulted.
10. It has been mentioned by the deponent of the affidavit sworn for the respondents that LR No. 36/111/1150 Nairobi had been registered in the names of the deceased and the applicant herein. A copy of the relevant certificate of title is attached; however the copy is faint and illegible. I can not tell from it who the proprietors of the property are and the nature of the registration or ownership of the property.
11. If the applicant is jointly registered with the deceased as proprietor of LR No. 36/111/1150 Nairobi, I would then appreciate his claim to superior right over the property. However, as matters stand no superior right has been established. In any event, if there was such superior claim then the applicant ought to have initiated appropriate proceedings, suited to address the issues that arise in such circumstances.
12. In view of what I have stated above, I have come to the conclusion that the application dated 30th July 2014 is wholly without merit and I do hereby dismiss the same with costs. The parties ought to concentrate on having the estate distributed instead of filing multiple applications on issues that are peripheral to the distribution of the estate.

DATED, SIGNED and DELIVERED at NAIROBI THIS 1ST DAY OF JULY, 2016.

W. MUSYOKA

JUDGE